

HUMAN SERVICES BOARD

INTRODUCTION

A fair hearing was held on May 2, 2007 based upon a fair hearing request filed on April 10, 2007. Testimony and documentary evidence show that petitioner made a request for fair hearing at his scheduled conciliation meeting of January 22, 2007. However, the Department did not forward this request to the Human Services Board. Instead, the Department sanctioned petitioner. In light of the failure to act upon the January 22, 2007 fair hearing request, further inquiry is not necessary in regard to whether petitioner failed to

comply with Reach Up requirements. The sanctions should be rescinded.

The decision is based upon the testimony and documentary evidence from the hearing and subsequent legal briefing.

FINDINGS OF FACT

1. The petitioner lives with his partner, D. F., and their five minor children.

2. The family applied for RUFA assistance at the end of August 2006 after petitioner was laid off from his employment. Petitioner was designated the primary earner parent (PEP).

3. Petitioner was assigned to J.P., RUFA case manager at the Department of Labor (DOL). The Department has a contract with the DOL to provide case managements services for RUFA recipients.

4. Petitioner and J.P. met on or about September 6, 2006 to complete his Family Development Plan (FDP). Based on the FDP, Petitioner engaged in job search with the understanding that if he did not find employment by October 6, 2007, he would be placed into a Community Service Placement (CSP). When petitioner was not able to find

employment, petitioner was placed into a CSP with Recycle North.

5. Petitioner complied with the work search requirements and his placement with Recycle North.

6. Petitioner was granted a good cause exception to his CSP when he missed work due to illness, bronchitis complicated by a reaction to an antibiotic.

7. J.P. received participant progress reports from Recycle North including (1) a report for the period through October 20, 2006 noting good performance but a need for petitioner to call in when he was sick and (2) a report on or about December 12, 2006 for the period of November 7 through December 1, 2006 stating that petitioner's work was excellent.

8. On or about December 26, 2006, petitioner dropped in to see J.P. and requested a new placement. Petitioner and J.P. differ as to the stated reasons; however, CSPs are changed every three months and petitioner was nearing the three month cutoff.

9. J.P. found petitioner a placement at Good News Garage beginning January 2, 2007. J.P. informed petitioner about the placement on December 27, 2006. According to J.P., she asked petitioner whether he wanted to contact Recycle

North about the change or have her contact them. According to J.P., petitioner said he would contact Recycle North.

J.P. received a telephone call from D.S. of Recycle North on January 3, 2007 asking about petitioner as D.S. had not been informed that petitioner changed his CSP.

10. On or about January 12, 2007, J.P. received a telephone call from Good News Garage that petitioner had not worked since January 5.

11. On or about January 16, 2007, J.P. sent petitioner a Conciliation Letter setting up an appointment on January 22, 2007. In the Conciliation Letter, J.P. noted that she had been informed that petitioner had not been at his CSP since January 5, 2007 and that petitioner had not informed Recycle North that he was changing his work site. The Conciliation Letter explains the purpose of the meeting and potential consequences for failure to meet or complete the conciliation process.

12. Petitioner came to the conciliation meeting on January 22, 2007. J.P. testified that petitioner first asked for a fair hearing and did not want to discuss anything else. J.P. testified that she tried to explain the purpose of the conciliation meeting and learn why petitioner had not continued at Good News Garage. According to J.P., she told

petitioner his actions were an overt refusal and that she would have to sanction him. J.P. did not process the fair hearing request. Instead, J.P. submitted a sanction authorization to the Department.

13. Petitioner testified that he did not remember what occurred at the conciliation meeting. According to petitioner, he had a relapse of bronchitis and was on medication. As a result, he testified that he was in a bad state of mind and not thinking clearly during the conciliation meeting. Petitioner claimed that he missed work because of the illness. Missing work due to illness constitutes good cause.

14. The Department signed off on the Sanction Authorization on January 23, 2007. A Sanction notice was sent to petitioner on January 23, 2007 noting that \$75 would be deducted from his RUFA grant starting February 1, 2007.

15. Petitioner started a CSP on April 16, 2007 and sanctions were lifted May 1, 2007.

ORDER

The Department's decision to sanction petitioner is reversed and remanded consistent with the following decision.

REASONS

A cardinal principle of the welfare system is that recipients have the right to request a fair hearing to challenge decisions by the applicable state agency affecting their benefits. Goldberg v. Kelly, 397 U.S. 254 (1970).

The right to request a fair hearing is recognized in the enabling legislation for the Human Services Board at 3 V.S.A. § 3091(a) which states:

. . .An opportunity for a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits, or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other agency action affecting his or her receipt of assistance, benefits or services, or license or license application; or because the individual is aggrieved by agency policy as it affects his or her situation.
(emphasis added)

The Vermont Legislature incorporated these appeal rights in the Reach-Up program. 33 V.S.A. § 1132.

The Department has promulgated regulations to enforce these rights. W.A.M. § 2380. As part of the Reach Up Services Referral, petitioner was notified in writing that:

If you have any complaint regarding your participation in or treatment by this program, you can request a fair hearing by speaking to or writing to a worker, supervisor or director.

When J.P. heard petitioner's request for fair hearing on January 22, 2007, she should have processed the request. At that point, the conciliation process and potential for sanctions should have stopped.

Under normal procedures, the Board would have received the fair hearing request and scheduled a hearing during late February. A hearing would have provided a means to address petitioner's grievance as well as ensure that he understood his responsibilities under the Reach-Up program. In addition, petitioner would have received continuing benefits pending the resolution of the fair hearing. Instead, petitioner lost \$75 per month for three months. Although the amount seems small, the amount is significant for families receiving RUFA assistance.

The Department may argue that petitioner withdrew his request for fair hearing.¹ However, the Department's argument only compounds the original mistake of not following proper procedures when a fair hearing is requested. The proper procedure is for the Department to inform the Board that the petitioner wants to withdraw the fair hearing request. The Board then uses a confirmation letter to the

¹ J.P. testified that petitioner came to see her on January 25, 2007 and asked to withdraw the fair hearing.

petitioner to verify that the request is withdrawn. This was not done.

Although we do not know what the outcome of the fair hearing would be, the lack of the fair hearing prevented a timely resolution of the issues between the petitioner and the Department.

The Reach Up program is modeled on a case management approach to help participants become self-sufficient. 33 V.S.A. §§ 1102, 1106, and 1107. Both the petitioner and the Department have responsibilities. The Department's responsibilities include following their regulations. This is especially true since the Reach Up program is a remedial program, not a punitive program. As stated in Fair Hearing No. 12,720:

[i]n sanctioning those mandatory participants who do refuse to participate—an act that has severe consequences for that individual's entire family—the Department must comply with the strict letter of the regulations. In this case it did not do so.

Here, the Department has not complied with its fair hearing regulations. As a result, the sanction should be rescinded and the monies withheld from the RUFA grant returned to the petitioner.

Rescinding the sanction does not mean that the Department cannot consider whether an overpayment would then

occur. If the Department considers taking further action, the Department should consider two caveats. First, the Department should confer with petitioner regarding his claim of good cause through illness. Petitioner would have a responsibility to explain the circumstances to the Department. Second, the Department should look at whether the regulations were properly followed by the DOL. In particular, DOL does not meet individually with participants who are under sanction. The Reach Up statute contemplates an individual meeting between the case manager and participant in which the parties can review and reassess the family development plan and work towards the participant complying with work requirements. 33 V.S.A. § 1116(h).

Based upon the above decision, the Department's decision is reversed.

#